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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
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7 ROBERT HEATH, ET AL.,

8 Plaintiffs,

9 v.

10 GOOGLE LLC,

11 Defendant.

Case No. [15-cv-01824-BLF](#)

**ORDER CLARIFYING SCOPE OF
DISCOVERY**

[Re: ECF 357]

12 Before the Court is Defendant Google LLC's ("Google") Motion for Clarification or, in
13 the Alternative, Motion for Leave to File Motion for Reconsideration ("Motion"). *See* Mot., ECF
14 357. Through this motion, Google seeks clarification as to whether a pending discovery dispute
15 should be submitted to the magistrate judge, or whether Google must instead seek leave to file a
16 motion for reconsideration of a previous order that Plaintiffs argue foreclosed the disputed
17 discovery.

18 In his July 27, 2017 discovery dispute order, Magistrate Judge Lloyd relied on this Court's
19 discussions with the parties about the scope of discovery to determine what "level of discovery
20 [Google] may be allowed to obtain from the opt-in[] [Plaintiffs]." "Order," ECF 185 at 1. Based
21 on his understanding that this Court believed "it should be limited discovery, not full discovery,"
22 he prescribed a discovery plan allowing for written discovery sent to 75 opt-in Plaintiffs and
23 depositions of 35 Plaintiffs. *Id.* at 2. This Court later upheld the scope of discovery set forth in
24 that Order, referencing, in part, discussions held at the June 6, 2017 Case Management Conference
25 ("CMC," ECF 173) and the case *Wellens v. Daiichi Sankyo Inc.*, No. C-13-00581-WHO(DMR), 2014
26 WL 7385990 (N.D. Cal. Dec. 29, 2014). *See* ECF 199; 207.

27 Through its present motion, Google requests clarification of Judge Lloyd's Order and this
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1 Court’s subsequent approval thereof. Google believes that this limitation applied only to discovery
2 pre-certification (*i.e.*, pre-denial of decertification) of the collective action. *See* Mot. at 1. By contrast,
3 Plaintiffs believe this Court and Magistrate Judge Lloyd’s Order limited Google to this discovery
4 scope for the entirety of discovery (though it admits that “additional discovery relating to the Opt-Ins’
5 damages and mitigation damages may be necessary in Phase II”). *Opp.* at 4–5 & n.1, ECF 364.
6 Because decertification was denied, Google now seeks additional discovery from the Opt-Ins prior to
7 trial and requests the Court clarify whether this issue is an open one, such that the related discovery
8 dispute would go to the magistrate judge. *Mot.* at 1–3.

9 The Court finds it clear from the record that Judge Lloyd’s Order limiting discovery applied
10 only to pre-decertification discovery. This Court expressly stated as much at the June 6, 2017 case
11 management conference, stating “I think that in terms of allowing Google to oppose or to bring forth a
12 de-cert motion, that [it] is appropriate that Google have access to enough information to highlight the
13 most disparate group of plaintiffs to establish that they are not similarly situated.” CMC at 8:13–17;
14 *see also* CMC at 7:11–8:4 (discussing discovery “[i]n terms of the liability phase”). And the Court
15 referenced *Wellens*, 2014 WL 7385990 as persuasive, a case dealing explicitly with the scope of
16 discovery pre-decertification. Likewise, the transcript from the hearing in front of Judge Lloyd on the
17 underlying discovery dispute makes clear that he also had certification in mind. There, he discussed
18 certain requested discovery by stating, “I don’t see how it goes to the question of decertification.”
19 Hearing Tr. at 8:22–23, ECF 192; *see also* Hearing Tr. at 10:8–12 (“I’m just not overwhelmed by the
20 argument of the defense that they need damage information to show that there’s a diversity of potential
21 damages . . . and that that factor would weigh in whether or not the class should remain certified or
22 not.”). As such, this Court finds that the scope of discovery was limited only for the purposes of
23 decertification.

24 To be clear, the present Order clarifies only that Magistrate Judge Lloyd’s Order did not set the
25 scope of discovery outside of that necessary for decertification. This order does not address the proper
26 scope of any non-decertification discovery, or whether a request for any such discovery at this time
27 would be timely. Those matters should be addressed to the magistrate judge responsible for discovery
28 disputes.

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IT IS SO ORDERED.

Dated: September 27, 2018

A handwritten signature in black ink, reading "Beth Labson Freeman". The signature is written in a cursive, flowing style. The first name "Beth" is written with a large, prominent "B". The last name "Freeman" is written with a large, prominent "F". The signature is written on a horizontal line.

BETH LABSON FREEMAN
United States District Judge